

1 Ramon Rossi Lopez - rlopez@lopezmchugh.com
(California Bar Number 86361; admitted *pro hac vice*)
2 Lopez McHugh LLP
100 Bayview Circle, Suite 5600
3 Newport Beach, California 92660
949-812-5771

4 Mark S. O'Connor (011029) - moconnor@beusgilbert.com
5 BEUS GILBERT MCGRODER PLLC.
701 North 44th Street
6 Phoenix, Arizona 85008
480.429.3000

7
8 *Co-Lead/Liaison Counsel for Plaintiffs*

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF ARIZONA

11 In Re Bard IVC Filters Products
12 Liability Litigation

No. MD-15-02641-PHX-DGC

**MOTION TO SET DEADLINE TO
RESPOND TO RECOMMENDATION TO
APPOINT COMMON BENEFIT FEE
AND COST COMMITTEE**

13
14
15 Plaintiffs' Co-Lead Counsel and the Plaintiffs' Executive Committee ("PEC")
16 move this Court to set a deadline for members of the Plaintiffs' Steering Committee
17 ("PSC") to respond to the Recommendation to Appoint Common Benefit Fee and Cost
18 Committee (the "Recommendation"). In particular, Plaintiffs' Co-Lead Counsel and the
19 PEC request the PSC members have until March 9, 2020, to file any response(s) to the
20 Recommendation. This extension is to ensure that all PSC members have adequate time
21 to review the Recommendation and to meet and confer with Plaintiffs' Co-Lead Counsel
22 and/or the PEC as necessary

23 The following Memorandum of Points and Authorities supports this request.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 On February 6, 2020, Plaintiffs' Co-Lead Counsel and the PEC filed the
26 Recommendation under seal. Because filing of the Recommendation was made under
27 seal, it was not available to PSC members (or anyone else) through the Court's electronic
28 filing system. Accordingly, Co-Lead counsel emailed a copy of the Recommendation to

1 PSC members on February 12, 2020. Based on Co-Lead Counsel's experience in
2 communicating and dealing with the PSC, counsel has found that email is a highly
3 effective means of communicating with the PSC members and that the PSC members
4 receive and respond to communications by email.¹

5 Because of the manner and timing of service, Plaintiffs' Co-Lead Counsel and the
6 PEC want to ensure that members of the PSC have adequate time to review the
7 Recommendation and to raise any questions with Plaintiffs' Co-Lead Counsel and the
8 PEC. In the event that there are such questions or issues, the additional time will allow
9 Plaintiffs' Co-Lead Counsel and the PEC to meet and confer regarding those issues.

10 Further, although Case Management Order No. 1 requires Plaintiffs' Co-Lead
11 counsel to "[m]aintain responsibility for service upon all other attorneys and parties as to
12 filings made in the master docket" and that they shall "distribute" such filings "by email,
13 overnight courier service, or telecopier," it is not clear that such distribution constitutes
14 service under Federal Rule of Civil Procedure 5(b) as to motions that do not involve
15 Defendants but only affect plaintiffs and PSC members. Because the under-seal filed
16 Recommendation was not available to PSC members via ECF and because of this lack of
17 clarity as to whether the Recommendation has been served in accordance with Rule 5(b),
18 Co-Lead Counsel and the PEC request that the Court set a firm date for any response by a
19 PSC member to the Recommendation.

20 In order to provide PSC members with adequate time to review the
21 Recommendation, to address any questions or issues they may have with Plaintiffs' Co-
22 Lead Counsel and the PEC, and to file any potential response to the Recommendation,
23 Plaintiffs' Co-Lead Counsel and the PEC request that the Court set a deadline for any
24 response to the Recommendation from PSC members of March 9, 2020.

25 ///

27 ¹ Plaintiffs' Co-Lead Counsel has reviewed the email addresses for PSC members to
28 whom the Recommendation was sent to ensure they were the correct addresses for those
individuals.

1 DATED this 2nd day of March 2020.

2 BEUS GILBERT MCGRODER PLLC

3 By: /s/ Mark S. O'Connor

4 Mark S. O'Connor
5 701 North 44th Street
Phoenix, Arizona 85008

6 LOPEZ McHUGH LLP

7 Ramon Rossi Lopez (CA Bar No. 86361)
8 (admitted pro hac vice)
100 Bayview Circle, Suite 5600
Newport Beach, California 92660

9 *Co-Lead/Liaison Counsel for Plaintiffs*

10 **CERTIFICATE OF SERVICE**

11
12 I hereby certify that on this 2nd day of March 2020, I electronically transmitted the
13 attached document to the Clerk's Office using the CM/ECF System for filing and
14 transmittal of a Notice of Electronic Filing.

15
16 /s/ Jessica Gallentine